

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the matter of )  
 )  
Amendment of Section 73.202(b), )  
Table of Allotments, ) MB Docket No. 02-115  
FM Broadcast Stations. ) RM-10427  
(Monroe and Luna Pier, Michigan) )

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: September 4, 2002**

**Released: September 20, 2002**

By the Assistant Chief Audio Division:

1. The Audio Division has before it a *Notice of Proposed Rulemaking*<sup>1</sup> issued at the request of Cumulus Licensing Corporation ("petitioner"), licensee of Station WTWR(FM), Monroe, Michigan, proposing that we reallocate Channel 252A from Monroe, Michigan to Luna Pier, Michigan, as that community's first local aural transmission service, and modify the license of Station WTWR(FM) to reflect the change of community. Petitioner filed comments in support of its proposal and reiterated its intention to file the necessary applications to implement the modification. We received no other comments.

2. Petitioners filed their proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.<sup>2</sup> Here, the amended allotment would be mutually exclusive with the station's present allotment. In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.<sup>3</sup>

3. As stated in the *Notice*, this proposal will provide a first local aural transmission service to Luna Pier, 2000 U.S. Census population 1,483 persons, and will not deprive Monroe of its sole local transmission service.<sup>4</sup> Accordingly, it will result in a preferential arrangement of allotments. Luna Pier is a community for allotment purposes. Luna Pier was developed as a resort community in the early 1900's and incorporated as a city in 1963. Situated on the shores of Lake Erie, the community has a sandy beach with a crescent-shaped pier offering access to the lake. Luna Pier has its own a zip code and post office. It is governed by an elected mayor and city council, and the city provides municipal services such as police, fire protection, waste water handling, zoning and permitting, street maintenance and leaf collection. It has an elementary school, a library, two churches, a medical clinic and numerous retail

<sup>1</sup> See *Monroe and Luna Pier, Michigan*, 17 FCC Rcd 8890 (2002).

<sup>2</sup> See *Report and Order* in MM Docket No. 88-526 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O").

<sup>3</sup> The FM Allotment priorities are: (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Second Report and Order* in BC Docket 80-130, ("Revision of FM Assignment Policies and Procedures"), 90 FCC2d 88, 91 (1982).

<sup>4</sup> Stations WEJY(FM), WJOF(FM) and WLLZ(AM) will remain in Monroe.

businesses. A number of sport fishing operators offer charter services, and the Luna Pier Harbor Club serves boat owners and operators.

4. Channel 252A can be allotted at Luna Pier at petitioner's transmitter site which is 4.7 kilometers (2.9 miles) northwest of the community.<sup>5</sup> Station WTWR(FM) has two preexisting short spacings, but they are not a bar to this change of community because they are grandfathered pursuant to Section 73.213 of the rules and the change of community is being implemented without any change in facilities at petitioner's existing transmitter site.<sup>6</sup>

5. Luna Pier is located within 320 kilometers (200 miles) of the U.S.-Canadian border and Canadian concurrence in the allotment has been requested but has not yet been received. However, we will reallocate Channel 252A to Luna Pier at this time. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian Government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement or if specifically objected to by Industry Canada."

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED That effective November 4, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

<u>Community</u>	<u>Channel</u>
Monroe, Michigan	---
Luna Pier, Michigan	252A

7. IT IS ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Order* to the following:

Mark N. Lipp  
J. Thomas Nolan  
Shook, Hardy & Bacon  
600 14<sup>th</sup> Street, N.W. Suite 800  
Washington, DC 20005-2004

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Cumulus Licensing Corporation for Station WTWR(FM), IS MODIFIED to specify operation on Channel 252A at Luna Pier, Michigan, subject to the following conditions:

- a) Within 90 days of the effective date of this *Order*, each licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

<sup>5</sup> Coordinates for Channel 252A at Luna Pier are 41-50-43 NL and 83-27-59 WL.

<sup>6</sup> See *Fremont and Holton, Michigan*, 14 FCC Rcd 17108 (1999); *Newnan and Peachtree, Georgia*, 7 FCC Rcd 6307(1992).

- b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

9. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license. As a result of this proceeding, Cumulus Licensing Corporation is required to submit rule making fees in addition to the fees required for the applications to effect the change of community for Station WTWR(FM).

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Victoria M. McCauley (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau